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Liquid Transporters, Inc., a wholly owned subsidiary of Trimac Transportation, Inc. and International Brotherhood of Teamsters, Local 107, AFL-CIO, Petitioner. Cases 4-RC-20215 and 4-RC-20216

September 28, 2001

ORDER DENYING REVIEW

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Supplemental Decision on Objections and Certification of Representative and Petition to Revoke the Certification (pertinent portions of which are attached as an appendix). The request for review and petition to revoke certification are denied as they raise no substantial issues warranting review.

In denying review with respect to Objection #1, we find that the Employer is precluded from objecting to the Petitioner's use of Patrick Webb as an observer. Objection #1 alleges that Webb is a statutory supervisor and that the Union's use of him as an election observer constitutes grounds for setting aside the election. As the Employer notes, the Board recently overruled precedent and held that a union's use of a statutory supervisor as an election observer constitutes objectionable conduct. *Family Service Agency*, 331 NLRB No. 103 (2000). It is well-established Board law, however, that an employer must raise the alleged supervisory status of a union's election observer at the time of the preelection conference; otherwise, any such objection is precluded, and the employer may not raise the issue for the first time in its post-election objections. See *Monarch Building Supply*, 276 NLRB 116 (1985); *Mid-Continent Spring Co. of Kentucky*, 273 NLRB 884, 887 (1984); *Howard Cooper Corp.*, 121 NLRB 950 (1958).

Further, the Employer included Webb as an eligible voter on its *Excelsior* list and did not challenge his vote in the election. Also, at the preelection hearing in Case 4-RC-19705 (which was incorporated into the record here), and in the preelection hearing in this case, the Employer never contended that Webb was a statutory supervisor and did not request review in either case of the Regional Director's inclusion of Webb in the unit. Finally, in its Order dated July 27, 2001, the Board specifically found that Webb did not exercise statutory supervisory

authority, and the Employer failed to file a motion for reconsideration of that finding.

Accordingly, we find that the Employer may not now raise the issue of Webb's supervisory status as a basis to contest the election.¹

Dated, Washington, D.C. September 28, 2001

Wilma B. Liebman, Member

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

SUPPLEMENTAL DECISION ON OBJECTIONS TO ELECTION
AND CERTIFICATION OF REPRESENTATIVE

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Pursuant to Section 102.69(c) of the Board's Rules and Regulations, an investigation of the Objections was conducted under my supervision. The Objections and supporting evidence submitted by the Employer have been carefully considered. The investigation disclosed and the undersigned reports as follows:¹

Objection 1

This Objection concerns the Petitioner's use of Patrick Webb as an election observer. In support of this Objection, the Employer submitted an affidavit of Dispatcher Corinne Anne Cooper stating that Webb served as the Petitioner's observer during the second voting session of

¹ Although Member Truesdale dissented in *Family Service Agency*, he agrees with his colleagues that the Employer has waived its right to file an objection to the election under the holding in that case.

¹ It is well established that it is the duty of the party filing objections to furnish evidence sufficient to establish a prima facie case in support of the objections before the Regional Director is required to investigate the objections further. See *Aurora Steel Products*, 240 NLRB 46, fn. 3 (1979); *Allen Tyler & Son*, 234 NLRB 212, fn. 2 (1978). For the reasons set forth herein, I have concluded that the evidence proffered by the Employer in support of its Objections to the election does not provide a basis for conducting a hearing in this matter. In considering the Objections, I have presumed that the evidence presented by the Employer is true. Moreover, presuming the truth of the Employer's evidence and contentions, I have concluded as a matter of law that the alleged objectionable conduct does not warrant setting aside the election. Accordingly, I have concluded that no hearing is necessary to resolve these Objections. Section 102.69(c) of the Board's Rules and Regulations; *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, fn. 1 (1992).

the July 27, 2001 election. The Employer argues that Webb is a supervisor within the meaning of Section 2(11) of the Act, and that his use as an observer was improper under the Board's decision in *Family Service Agency*, 331 NLRB No. 103 (2000). The Employer also argues that a colloquy during the course of the representation hearing was insufficient to constitute a stipulation that Webb is not a statutory supervisor.

Notwithstanding the Employer's contentions concerning Webb's status, the Board, in denying the Employer's Request for Review in these cases, specifically held that Webb "does not exercise supervisory authority in the interest of the Employer." Board Order dated July 27, 2001, fn. 1 (unpublished). Accordingly, as it has been determined that Webb was an eligible voter and not a statutory supervisor, I find that Objection 1 lacks merit.